



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,123	08/13/2001	Joseph M. Kinkade Jr	68-97	8722

23713 7590 04/08/2003

GREENLEE WINNER AND SULLIVAN P C
5370 MANHATTAN CIRCLE
SUITE 201
BOULDER, CO 80303

EXAMINER

COOK, LISA V

ART UNIT	PAPER NUMBER
----------	--------------

1641

12

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,123

Applicant(s)

KINKADE JR ET AL.

Examiner

Lisa V. Cook

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-81 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 1641

DETAILED ACTION

Remarks

1. Applicants response to the Restriction Requirement mailed 10/25/02 is acknowledged (Paper #12 filed 1/21/03). As noted by Applicant, Examiner inadvertently did not include Group IV in the Restriction. The following Restriction is presented to correct the deficiency. Examiner apologizes for any inconvenience this may cause Applicant.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- A. Group I, claim(s) 1-44 are drawn to an immunoassay method to *detect* a biomarker of oxidative stress in a biological sample utilizing an antibody specific for a biomarker of oxidative stress in a biological sample, classified in class 436, subclass 512 for example. (A method of utilizing a special technical feature).
- B. Group II, claim(s) 45-53 are drawn to a method of *removing* oxidatively *damaged* proteins, peptides, or proteineacious aggregate in a sample employing a single antibody, classified in class 435, subclass 2 for example. (A second method of utilizing a special technical feature).

Art Unit: 1641

- C. Group **III**, claim(s) 54-59 and 79 are drawn to a method and kit to *detect* one or more oxidatively *damaged* proteins, peptides, or proteinaceous aggregate in a sample employing dual antibodies, classified in class 435, subclass 7.92 and class 422, subclass 61 for example. (A third method of utilizing a special technical feature).
- D. Group **IV**, claim(s) 60-62 are drawn to methods of diagnosing and or treating the presence of a disease associated with oxidative stress in a mammalian subject, classified in class 424, subclass 1.49 for example. (A fourth method of utilizing a special technical feature).
- E. Group **V**, claim(s) 63-67, 71-72, and 76-78 are drawn to a monoclonal antibody produced from hybridoma cell lines K2.F1 or K2.F1.6, classified in class 530, subclass 388.1 and class 435, subclass 326 for example. (A special technical features having utility in any one of the claimed methods).
- F. Group **VI**, claim(s) 68-70, 73-75, and 80-81 are drawn to a polyclonal antibody, classified in class 530, subclass 387.1 for example. (A second special technical feature having utility in any one of the claimed methods).

3. The following inventions or groups of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention, to which the claims must be restricted.

4. The inventions listed as Groups A through E, do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

5. The different methods of inventions A-D employ an antibody (special technical feature) to detect oxidative related parameters. However two antibodies or special technical features are claimed. Further they can be produced by hybridoma cell line K2.F1 or hybridoma cell line K2.F1.6. Group E is directed to a monoclonal antibody, while Group F is directed to a polyclonal antibody.

These two antibodies/compounds have different and diverse structural limitations and are produced by different procedures (see claim 65 for the monoclonal antibody and claim 80 for the polyclonal antibody), therein the invention has two special technical features, which may be utilized, in any of the method inventions. Further each of the methods is distinct in that they have diverse method steps and utilize different reagents. Specifically the method of Group A detects a biomarker of oxidative stress, the method of Group B removes oxidatively damaged protein from a sample via a single antibody, the method of Group C merely detects oxidatively damaged proteins via dual antibodies, while the method of Group D is directed to disease detection and treatment. Accordingly, Groups A through E, lack the same corresponding technical feature and do not relate to a single general inventive concept under PCT Rules 13.1 and 13.2. Please see 37 CFR 1.475(b).

Art Unit: 1641

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Please note that the classifications in the restriction are illustrative only and **do not** represent all the classes and subclasses which must be searched for each invention; nor is the search limited to issued US patents, but rather includes foreign patents and applications as well as literature searches.

7. Applicant is advised that the reply to this requirement be complete and must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

9. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 Fax number is (703) 308-4242, which is able to receive transmissions 24 hours/day, 7 days/week.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa V. Cook whose telephone number is (703) 305-0808. The examiner can normally be reached on Monday – Friday from 8:00AM – 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (703) 305-3399.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Lisa V. Cook
Art Unit 1641
CM1-7B17
(703) 305-0808
April 6, 2003



LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

04/07/03